S.B. CIVIL WRIT PETITION NO.4798/2007
Jagdish Chandra Sharma
vs
State of Rajasthan & Anr.

DATE OF ORDER : 10.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. VK Sharma, for the petitioner.

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Heard learned counsel for the petitioner.

Learned counsel for the petitioner submitted that petitioner was suspended by order dated 30.12.2002 (Annex.2). The petitioner challenged the suspension order by filing writ petition, which was registered as SBCWP No.2354/2005 wherein interim order was passed in favour of the petitioner and the suspension order dated 30.12.2002 was stayed by this Court. The petitioner since was facing criminal case, therefore, petitioner preferred revision petition being SB Civil Revision Petition No.871/2005 before this Court and in that criminal revision petition further proceedings in the case under the Prevention of Corruption Act, was stayed. The petitioner suspended because of the said allegation of corruption and he filed writ petition and this Court passed the interim order in favour of the petitioner. However, the aforesaid writ petition no.2354/2005 was dismissed by this court vide order dated 13.2.2007. The petitioner's writ petition was dismissed only on the ground that petitioner could have

preferred appeal against the order of suspension.

In view of the judgment dated 13.2.2007 passed in SBCWP No.2354/2005, the petitioner had no alternative remedy except to approach the appellate authority and petitioner tried to submit appeal before the learned Divisional Commissioner, but the said appeal was not accepted by the learned Divisional Commissioner, Bikaner on the ground of pendency of criminal revision petition as well as pendency of the criminal case, proceedings of which stayed by the High Court in SB Civil Revision Petition No.871/2006.

Learned counsel for the petitioner submitted that so far as order of suspension is concerned, that is absolutely a separate matter and petitioner has right to challenge this order and this Court held that petitioner could have preferred an appeal then petitioner's appeal cannot be left without consideration and without passing any order on that appeal on the ground that matter is pending before the courts in relation to allegation of corruption against the petitioner.

The petitioner has placed on record the copy of the appeal as Annex.9.

Since the petitioner is availing alternative remedy and this court by its order passed in SBCWP No.2354/2005 dismissed the writ petition of the petitioner on the ground of availability of alternative remedy, therefore, the appellate authority cannot

deny the opportunity of appeal to the petitioner and, therefore, he is required to decide the appeal.

Since the prayer of the petitioner is that respondent Divisional Commissioner may be directed to decide the appeal of the petitioner in accordance with the law, therefore, the writ petition of the petitioner is disposed of with the direction to the learned Divisional Commissioner to decide the appeal of the petitioner if it has been filed before the learned Divisional Commissioner, Bikaner and if has not been registered then the petitioner may submit the appeal within a period of ten days from today. The appeal may be decided by the learned Divisional Commissioner, Bikaner within a period of two months thereafter.

[PRAKASH TATIA], J.

c.p.goyal/-